

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM E. HUTCHISON, et al.,

No. CIV.S-03-1673 LKK DAD PS

Plaintiffs,

v.

FINDINGS AND RECOMMENDATIONS

UNITED STATES FOREST SERVICE,  
et al.,

Defendants.

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This matter is before the court on defendants' motion to dismiss pursuant to Rule 12(b)(6), or in the alternative summary judgment. For the reasons set forth below, the undersigned will recommend that defendants' motion for summary judgment be granted and this action be dismissed.

LEGAL STANDARDS

Summary judgment is appropriate when it is demonstrated that there exists no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R.

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1 Civ. P. 56(c); see also Adickes v. S.H. Kress & Co., 398 U.S. 144,  
2 157 (1970); Owen v. Local No. 169, 971 F.2d 347, 355 (9th Cir. 1992).

3 The party moving for summary judgment  
4 always bears the initial responsibility of  
5 informing the district court of the basis for its  
6 motion, and identifying those portions of "the  
7 pleadings, depositions, answers to  
interrogatories, and admissions on file, together  
with the affidavits, if any," which it believes  
demonstrate the absence of a genuine issue of  
material fact.

8 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). If the moving  
9 party meets its initial responsibility, the burden then shifts to the  
10 opposing party to establish that a genuine issue as to any material  
11 fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith  
12 Radio Corp., 475 U.S. 574, 586 (1986); see also First Nat'l Bank of  
13 Ariz. v. Cities Serv. Co., 391 U.S. 253, 288-89 (1968); Ruffin v.  
14 County of Los Angeles, 607 F.2d 1276, 1280 (9th Cir. 1979), cert.  
15 denied, 455 U.S. 951 (1980). The opposing party must demonstrate  
16 that the fact in contention is material, i.e., a fact that might  
17 affect the outcome of the suit under the governing law, and that the  
18 dispute is genuine, i.e., the evidence is such that a reasonable jury  
19 could return a verdict for the nonmoving party. Anderson v. Liberty  
20 Lobby, Inc., 477 U.S. 242, 248 (1986); T.W. Elec. Serv., Inc. v.  
21 Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987).

22 In resolving the summary judgment motion, the court  
23 examines the pleadings, depositions, answers to interrogatories, and  
24 admissions on file, together with the affidavits, if any. Rule  
25 56(c); see also SEC v. Seaboard Corp., 677 F.2d 1301, 1305-06 (9th  
26 Cir. 1982). The evidence of the opposing party is to be believed,

1       Anderson, 477 U.S. at 255, and all reasonable inferences that may be  
2       drawn from the facts placed before the court must be drawn in favor  
3       of the opposing party, Matsushita, 475 U.S. at 587 (citing United  
4       States v. Diebold, Inc., 369 U.S. 654, 655 (1962) (per curiam)); see  
5       also United States v. First Nat'l Bank of Circle, 652 F.2d 882, 887  
6       (9th Cir. 1981). Nevertheless, inferences are not drawn out of the  
7       air, and it is the opposing party's obligation to produce a factual  
8       predicate from which the inference may be drawn. See Richards v.  
9       Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985),  
10      aff'd, 810 F.2d 898, 902 (9th Cir. 1987).

## **ANALYSIS**

12 Plaintiffs William E. and David T. Hutchison, proceeding  
13 pro se, initiated this Bivens<sup>1</sup> action seeking damages after the  
14 United States removed a cabin from a mining claim located by  
15 plaintiffs. Plaintiffs maintain that they owned the cabin, which was  
16 present on the subject lands prior to the filing of their mining  
17 claim, and that they were deprived of that property without due  
18 process of law. The United States defendants<sup>2</sup> claim that the United  
19 States had earlier acquired ownership of the cabin when the former  
20 claimants abandoned their mining claim upon which the cabin was  
21 located. Because the undersigned agrees with defendants regarding  
22 the United States' ownership of the cabin, summary judgment for

<sup>1</sup> See Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).

<sup>2</sup> The named defendants in the amended complaint are Jean M. Masquelier (District Ranger); Greg Schimke (Mineral Officer); and Steve T. Eubanks (Forest Supervisor).

1 defendants on plaintiffs' sole cause of action for a violation of due  
2 process is appropriate.<sup>3</sup>

3 Resolution of the issue of which party owned the cabin at  
4 the time of its demolition and removal is dispositive. Resolution of  
5 that issue is in turn controlled by the decision of the Ninth Circuit  
6 in Brothers v. United States, 594 F.2d 740 (9th Cir. 1979), a case  
7 which both sides have addressed. The pertinent facts before the  
8 court in Brothers were virtually identical to the facts presented  
9 here. The case involved a claimant's abandonment of a mining claim  
10 on federal lands; the reversion of two cabins located on that claim  
11 to the federal government; the relocation of the claim by subsequent  
12 claimants who filed a claim coinciding with the boundaries of the  
13 original claim; and a dispute regarding the government's ownership of  
14 the cabins and the subsequent claimants' right to possess them. 594  
15 F.2d at 740-41. The subsequent claimants, just as plaintiffs in the  
16 case pending before this court, argued that when they relocated claim  
17 the buildings as well as the land vested in them. Id. at 741. In  
18 concluding that the action had been properly dismissed by the  
19 district court the Ninth Circuit squarely rejected plaintiffs'  
20 argument, stating

21 The plaintiffs had notice that the cabins had  
22 been abandoned to the government. The fact that  
23 the Forest Service gave [the former claimant]  
24 permission to remove them after the abandonment  
does not give the plaintiffs any rights or  
interest in them.

25 \_\_\_\_\_  
26 <sup>3</sup> Defendants raise several other arguments in their motion, but  
it is unnecessary to address those arguments, the undersigned having  
determined that plaintiffs had no possessory interest in the cabin.

1 We conclude that the plaintiffs failed to  
2 establish a possessory interest in the cabins and  
3 we need not reach the question whether they were  
4 unlawfully taken by the government.

5 Brothers, 594 F.2d at 741.

6 While the decision in Brothers was announced more than  
7 twenty years old, its holding has never been questioned. Finding the  
8 decision in Brothers controlling in the case of another dispute over  
9 ownership of the structures and personal property located on a  
relocated mining claim, one district court stated as follows:

10 Stated differently, when the Barnes' and the  
11 Hagamans validly relocated the mining claims,  
they did not get a possessory interest in the  
structures and personal property. What they  
received was an interest in the mining claims,  
less the structures and personal property. When  
13 Burnett subsequently purchased or received their  
interests in the claims, he succeeded to just the  
mining claims as well, with no possessory  
interest. The Ninth Circuit case law seems to be  
consistent with this view. See Brothers v.  
United States, 594 F.2d 740 (9th Cir. 1979). In  
Brothers, the plaintiffs brought an inverse  
condemnation suit against the Forest Service,  
claiming that the Forest Service had wrongfully  
taken a mining claim and two cabins located on  
the claim. The plaintiffs in Brothers argued  
that once they relocated the abandoned mining  
claim, the cabins, as well as the land, vested in  
them. They argued this, despite conceding the  
fact that the mining claims and buildings  
reverted to the United States when abandoned by  
the previous locator. Id. at 740-41. The Ninth  
Circuit specifically disagreed and pointed out  
that the plaintiffs had notice that the cabins  
had been abandoned to the government and that  
their predecessor was only granted permission to  
remove the cabins. Based upon this, the court  
found that the plaintiffs did not have any rights  
or interest in the cabins. Id. at 741-42. Thus,  
the court finds the Brothers case controlling.

26 United States v. Burnett, 750 F. Supp. 1029, 1032 (D. Idaho 1990).

1           In arguing that they had a possessory interest in the  
2 cabin, the Hutchisons rely on the holding of the California Supreme  
3 Court in Watterson v. Cruse, 179 Cal. 379 (1918). However, that  
4 state court decision concerned a dispute regarding the right to  
5 possession of a building between conflicting locators, not between  
6 the United States and a locator. Watterson v. Cruse therefore is  
7 inapposite. See Brothers, 594 F.2d at 741 (finding plaintiffs'  
8 reliance on The plaintiffs' reliance on The Yankee Lode Claim, 30  
9 L.D. 289 (1900), misplaced because the "case dealt only with the  
10 rights of prior and subsequent mining claimants as against each other  
11 rather than with the rights of a claimant as against the United  
12 States.").

13           Under the decision in Brothers the Hutchisons had no  
14 possessory interest in the cabin. The undersigned is not persuaded  
15 to reach a different conclusion by the three-page excerpt of a  
16 memorandum apparently authored in 1979 by an attorney-advisor for the  
17 United States Department of the Interior, Office of the Solicitor,  
18 Anchorage Region upon which plaintiffs rely. The memorandum  
19 addresses "Cultural Resources on Unpatented Mining Claims" and its  
20 relevance to the issue before the court is not explained by  
21 plaintiffs. Moreover, the excerpt of that memorandum submitted by  
22 plaintiffs for the court's consideration cites the decision in  
23 Brothers with approval and for the proposition that property such as  
24 cabins become the property of the United States upon abandonment of a  
25 mining claim.

26 ////

Plaintiffs having failed to establish a possessory interest in the cabin, their sole claim for violation of due process lacks merit. See Brothers, 594 F.2d at 741; see also Coakley v. Murphy, 884 F.2d 1218, 1220 (9th Cir. 1989) ("A due process claim is cognizable only if there is a recognized liberty or property interest at stake.").

## **CONCLUSION**

Accordingly, there existing no genuine issue as to any material fact and defendants being entitled to judgment as a matter of law, IT IS HEREBY RECOMMENDED that defendants' motion for summary judgment be granted and this action be dismissed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten (10) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: August 25, 2005.

Dale A. Dugd  
DALE A. DUGD  
UNITED STATES MAGISTRATE JUDGE

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